HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&
HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No:16102 OF 2007

Dated:07.08.2007

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Between:

B. Jagjeevan Rao

..Petitioner

And

1. The Government of Andhra Pradesh
   Rep., by its Secretary to Government
   Finance (Admn.III) Department and another.

..Respondents.

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HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&

HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No:16102 OF 2007

ORDER: (per Hon'ble Smt. Justice T. Meena Kumari)

The present writ petition is filed by the petitioner challenging the order of the Tribunal dated 19.4.2007 passed in O.A.No.2206 of 2007.

The petitioner herein is the applicant before the Tribunal. He filed the above O.A., seeking to set aside G.O.Ms.No.91 Finance (Admn. III) Department, dated 16.4.2007. It is the case of the applicant that he was dismissed from service as per the impugned G.O., by invoking Rule 25 of A.P.C.S. (CC & A) Rules on the ground that he was convicted by the Principal Special Judge for SPE & ACB cases, Hyderabad as per judgment dated 23.3.2007. Further, it is the case of the applicant that the sentence of imprisonment imposed by the learned Special Judge was suspended by the High Court vide orders in Crl.A.M.P.No.497 of 2007 in Crl.A.No.371 of 2007 dated 29.3.2007. The respondents-authorities without taking into consideration the suspension of the sentence, issued the proceedings dismissing the applicant.

The Tribunal having observed that the impugned order shows that the disciplinary authority has applied its mind and considered the case from angles and issued the impugned order and therefore, there is no infirmity in the order impugned so as to interfere, dismissed the O.A. at the admission stage. Having aggrieved by the same, the present writ petition is preferred by the applicant.

Heard the learned counsel appearing for the applicant and the learned Government Pleader for services.

Before going into the merits of the case, the facts that remain undisputed are that on the charge of illegal gratification, a charge sheet has been laid before the Principal Special Judge for SPE and ACB cases, City Civil Court, Hyderabad and the same was numbered as C.C.34 of 2002 wherein, the applicant was convicted for the offence

under section 1 (d) r/w 13 (2) of Prevention of Corruption Act, against which, the applicant has preferred an appeal before this Court in Crl.A.371 of 2007 wherein this Court has suspended the operation of the judgment of the A.C.B. Court. At this juncture, G.O.Ms.No:91, Finance (Admn.III) Department, dated 16.4.2007 was issued dismissing the applicant from service by taking into consideration the conviction and sentence imposed by the A.C.B. Court in C.C.No:34 of 2002.

It is the contention of the learned counsel for the applicant that the imposition of punishment during the pendency of the appeal before this Court, is in violation of Rule 25 (1) of the A.P.C.S. (CC & A) Rules and therefore, the Disciplinary authority has not applied its mind in dismissing the applicant. Hence, the tribunal is not justified in passing the order impugned.

Before going into the merits of the case, it is pertinent to note that the issue revolves around the provisions of Rule 25 (1) of the A.P.C.S. (CC & A) Rules, which reads as under:

Special Procedure in Certain Cases:-Notwithstanding anything contained in Rule 20 to Rule 24-

(1) where penalty is imposed on a Government Servant on the ground of conduct which has led to his conviction on a criminal charge, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit.

Thus, the above provisions makes it clear that in case of conviction in a criminal proceedings, the disciplinary authority may consider the circumstances of the case and make such orders as it deems fit. But, at this juncture, it is not out of place to mention that on the conviction and sentence imposed against the applicant by the A.C.B. Court, the applicant has preferred an appeal before this Court in Crl.A.371 of 2007 wherein the sentence imposed by the A.C.B. Court has been suspended and the said appeal is pending adjudication. At

this stage, the G.O. in question has been issued by the 1st respondent dismissing the applicant. In this regard, it is needless to observe that in view of the pendency of the criminal appeal as well as the suspension of the sentence imposed by the A.C.B. Court, the judgment passed by the A.C.B. Court has not become final. Therefore, passing of G.O.Ms.No:91 at this stage, amounts to violation of the special procedure as laid down under Rule 25 of the Rules and thereby, the same is hit by the principle of subjudice.

In this background of the matter coupled with the special procedure as laid down under Rule 25 of the Rules, We have no hesitation to hold that the order of the tribunal suffers from legal infirmity or irregularity. Hence, the order of the tribunal as well as the G.O.Ms.No:91, Finance (Admn.III) Deartment, dated 16.4.2007 and the order of the 2nd respondent in Endorsement. N.C. B3/5873, dated 20.4.2007 are liable to be set aside.

Accordingly, this writ petition is allowed as prayed for. No order as to costs.

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Justice T. Meena Kumari

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Justice G. Chandraiah

Date: 7th August, 2007
Nn/Gurc.

HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&
HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No:16102 OF 2007

(Order delivered by the Hon'ble Smt. Justice T. Meena Kumari)

7/08/2007